IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1611 OF 1999

Shri Dattaraya Kaluram Dedge)
Aged about 31 years, Working as)
Groundsman in the National Defence)
Academy, Khadakwasla, Pune)
residing at Quarter No.12/2)
Type II Quarters, N.D.A. Estate)
Khadakwasla, Pune.).. PETITIONER

VERSUS

1) The Union of India through)
the Secretary, Ministry of Defence)
South Block, New Delhi.)

2) The Comandant)
National Defence Academy)
Khadakwasla, Pune.).. RESPONDENTS

Mr.Sandeep Marne for the Petitioner.

Mr.A.G.Damle for the Respondents.

CORAM: V.G. PALSHIKAR AND
SMT.NISHITA MHATRE, JJ.

DATED: 10TH JANUARY 2005

ORAL JUDGMENT : (PER MHATRE, J.)

1. The Petitioner challenges the order of the Central Administrative Tribunal dated 19th March 1999 in Original Application No.174 of 1990. The Central Administrative Tribunal has dismissed the Original Application filed by the Petitioner.

2. The facts giving rise to the present Petition are as follows :

. The Petitioner was employed as a Casual Labourer

in the National Defence Academy at Pune. The Petitioner and several other Casual Labourers filed Original Application before the Central Administrative Tribunal for regularisation of their services. This Original Application was allowed and the Tribunal directed the Petitioner and other Casual Labourers to be regularised in employment. Accordingly, the Petitioner on 17th July 1998 was given an offer of appointment as Groundsman with effect from the same date. The appointment was temporary and terminable on giving one month's notice by either side. The Petitioner was put on probation for a period of two years. While accepting the appointment, the Petitioner was expected to fill in the attestation form giving various particulars. One of the particulars required from the Petitioner was whether he was involved in any criminal case. It appears that the form was filled in by a friend of the Petitioner and it was stated that no criminal case was pending against the Petitioner. On police verification report being called by the Respondents, it was found that there was a criminal case pending against the Petitioner. On 22nd February 1999, a notice was issued to the Petitioner terminating his services after one month from the date of the notice in accordance with sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Aggrieved by this notice, the Petitioner approached the Central Administrative Tribunal by filing Original Application No.174 of 1999. The Original Application was opposed by the Respondents by filing

Written Statement. The Respondents pleaded in the Written Statement that the termination order was issued on account of the Petitioner having suppressed the fact of his being involved in a criminal case while filling in the attestation form. It was further pleaded that since action is taken under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, there was no need to issue any show cause notice or holding an enquiry. The Central Administrative Tribunal accepted the submission of the Respondents and dismissed the Original Application.

3. Mr.Marne appearing for the Petitioner submits that although on the face of it the termination order dated 22nd February 1999 may appear innocuous, the Written Statement of the Respondents filed before the Central Administrative Tribunal indicates that the reason for terminating the services of the Petitioner was on account of suppression of facts while filling in the attestation form. He submits that by lifting the veil one could ascertain that the action against the petitioner was punitive in nature which had been taken under the guise of simple termination. He submits in such situation it was incumbent on the Respondents to issue a show cause notice and hold an enquiry in accordance with the principles of natural justice before effecting termination of service. He relies on the judgments in the case of *V.P.Ahuja* vs. *State of Punjab and others*, **2001 (1) S.C. SERVICES LAW JUDGMENTS 272**

and *A.P.State Federation of Coop. Spinning Mills Ltd. and another* vs. *P.V.Swaminathan*, **(2001) 10 SCC 83**.

4. Mr.Damle on the other hand appearing for the Respondents contends that the action taken is during the period of probation which does not require the holding of an enquiry. Furthermore, according to him, since the termination of service has been effected under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, there is no need to hold a disciplinary enquiry prior to terminating the services.

5. It is true that the order of termination is innocuous and does not apparently cast a stigma on the Petitioner. However, the Written Statement filed before the Central Administrative Tribunal discloses the real reason for terminating the services of the Petitioner. Apart from this Written Statement, the affidavit filed in this Court by the Respondents also contains an averment that the services of the Petitioner have been terminated on account of suppression of the vital facts while tendering the attestation form. In fact, the affidavit filed in this Court contains a further averment that the Petitioner had committed a misconduct by giving incorrect information at Item No.12 of the attestation form by stating that he was never arrested or prosecuted earlier. The affidavit also contains an averment to the effect that the employment of the Petitioner was liable to be terminated as the Petitioner

had given false information. All these averments contained both in the Written Statement and the affidavit of Major M.Yaseen filed on behalf of the Respondents disclose that the real reason for terminating the services of the Petitioner was that he had suppressed information which he was required to furnish while filling in the attestation form. Obviously, therefore, the termination of the Petitioner's services was grounded on a misconduct having been committed by him and was therefore punitive and stigmatic. Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 is applicable only when the action taken is one of termination simpliciter and not as a punitive termination. The circumstances leading to the termination of the services of the Petitioner indicate that the Petitioner's termination was not by way of simple discharge but was in fact a punitive termination.

6. In the case of *Ahuja* (supra), the Apex Court has held that a probationer or a temporary servant is entitled to certain protection and his services cannot be terminated arbitrarily nor case his services be terminated in a punitive manner without complying with the principles of natural justice. In the present case, there is no doubt that the Respondents have not complied with the basic requirement of the principles of natural justice prior to terminating the services of the Petitioner as and by way of a punitive action.

7. In the case of *A.P.State Federation* (supra), the services of the employee had been terminated prematurely by an innocuously worded order. The counter-affidavit filed before the High Court in defence of the termination order indicated that the termination of service was in fact founded on reasons which were punitive in nature. The Apex Court held that in such circumstances the impugned termination order was penal in nature and since no enquiry was held, the termination of service was wrongful.

8. We have no manner of doubt that the present case is also one where the termination order, although couched in an innocuous language, has been issued against the Petitioner for suppression of facts. Although the order does not cast any stigma, the attending circumstances and the averments in the Written Statement and the affidavit indicate that the action taken against the Petitioner was on account of the alleged misconduct and was therefore punitive in nature.

9. The Tribunal has, therefore, erred in concluding that the order of termination was sustainable. The impugned judgment and order dated 19th March 1999 of the Central Administrative Tribunal, Mumbai in Original Application No.174 of 1999 is, therefore, set aside.

10. Rule made absolute. No order as to costs.

(V.G.PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)